

EX PARTE OR LATE FILED

ORIGINAL

ORIGINAL

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

3000 K STREET, NW, SUITE 300

WASHINGTON, DC 20007-5116

TELEPHONE (202) 424-7500

FACSIMILE (202) 424-7645

WWW.SWIDLAW.COM

WENDY M. CREEDEN
DIRECT DIAL (202) 295-8532
WMCREEDEN@SWIDLAW.COM

NEW YORK OFFICE
405 LEXINGTON AVENUE
NEW YORK, NY 10174
(212) 758-9500 FAX (212) 758-9526

January 14, 2002

RECEIVED

JAN 14 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA COURIER

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street, S.W., TW-A325
Washington, D.C. 20554

Re: **Citizens for Independent Public Broadcasting – Pittsburgh**
Ex Parte Presentation; MM Docket No. 01-276
In the Matter of Deletion of Noncommercial Reservation of
Channel*16, 482-488 MHz, Pittsburgh, Pennsylvania

Dear Ms. Salas:

Pursuant to Section 1.1206(b) of the Commission's Rules, this letter is to provide notice of an *ex parte* meeting with Commission staff in the above-referenced docket. On January 11, 2002, Amy Wolverton and Cliff Martin of Georgetown University Law Center's Institute for Public Representation on behalf of CIPB; Jerry Starr, Ann Sutherland Harris and Michael Schneider of the Citizens for Independent Public Broadcasting – Pittsburgh ("CIPB"); and Harry Malone and Wendy Creeden of Swidler Berlin Shereff Friedman LLP on behalf of CIPB, met with Jane Mago, General Counsel of the Commission, and Joel Kaufman and Michele Ellison of the General Counsel's Office.

At this meeting, representatives of CIPB discussed the substance of their Comments filed with the Commission in this proceeding on December 18, 2001. CIPB explained that WQED, with its national emphasis, is lacking in the lively, informative, Pittsburgh-orientated programming produced by the former WQEX prior to WQEX's simulcasting. They reiterated that the Pittsburgh community, with 54 commercial stations already included on its basic cable service, is not in need of another commercial station, but rather continues to need a second, independent programmed noncommercial educational television station. CIPB further described how Pittsburgh, as a thriving, growing community, has the requisite resources and willing participants to support second public broadcasting station, as concluded in a recent report commissioned on the issue.

No. of Copies rec'd 011
List ABOVE

Ms. Magalie Roman Salas, Secretary
January 14, 2001
Page 2

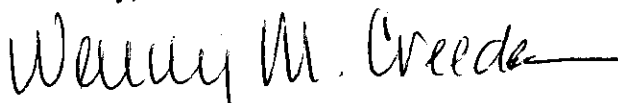
CIPB also discussed how the public has suffered from over a four-year delay in receiving the benefits of a second public broadcast station that has become essentially "dark" due to continued simulcasting by WQED. They explained that the much of the dereservation request "delay" claimed by WQED may be attributed to the complexity of the issues presented by WQED in its previous application and to WQED's own pace and responsiveness to the Commission's request to fine-tune its application.

Finally, representatives of CIPB reiterated that the dereservation of Channel 16 would create a new, dangerous precedent and establish skewed economic incentives that likely would have broader implications on public broadcasting nationwide. CIPB expressed their concern for the potential impact of such an unprecedented action on the approximately 70 communities with two or more public broadcasting stations, including the 14 communities in which one entity owns two or more public broadcasting stations.

Included with this letter is a copy of the meeting talking points, as well as a Pittsburgh Post-Gazette article on the dereservation issues, both of which were provided to Ms. Mago, Mr. Kaufman and Ms. Ellison at this meeting.

Pursuant to the Commission's Rules, two copies of this *ex parte* notice and paper presentations are being filed with the Secretary's Office. Please do not hesitate to contact me at 202-295-8532 should you have any questions regarding this filing.

Sincerely,



Wendy M. Creeden

Enclosures

cc: Jane Mago (FCC)
Joel Kaufman (FCC)
Michelle Ellison (FCC)
Jerry Starr (CIPB)
Ann Sutherland Harris (CIPB)
Michael Schneider (CIPB)
Angela Campbell (IPR)
Amy Wolverton (IPR)
Cliff Martin (IPR)
Harry Malone (SBSF)
Qualex International

***In the Matter of Deletion of Noncommercial Reservation
of Channel *16, 482-488 MHz, Pittsburgh, Pennsylvania
MM Docket No. 01-276***

- **Pittsburgh continues to need a second, independently programmed noncommercial educational television station.**
 - If anyone has suffered from delay in this proceeding, it is the public as they have endured over four years of simulcasting.
 - Public letters and emails demonstrate the crucial need for an additional station in the Pittsburgh region.
 - New technologies are no substitute for public television because they are not universally available or free, and they do not offer comparable locally-oriented content.
- **Pittsburgh has the resources to support a second noncommercial educational television station.**
 - Pittsburgh economy healthier than ever according to regional economists.
 - Total personal income and corporate revenues in the area have increased.
 - Communities smaller and with less income and revenue resources have and continue to support two donor-dependant noncommercial stations.
- **Dereservation of Channel *16 would create a dangerous precedent likely to have broader implications on public broadcasting nationwide.**
 - Deletion of the reservation of an operating noncommercial educational station to permit sale to a commercial operator is unprecedented and inconsistent with FCC goals of promoting public television. Not even severe financial distress or the threat of a station going dark have moved the FCC to dereserve a channel, and it should not do so in this case.
 - If dereservation granted in this case, station licensees would likely flood the FCC with petitions for dereservation in an effort at commercial financial gain at the expense of the public.

*Presented by Citizens for Independent Public Broadcasting – Pittsburgh
January 11, 2002*



Putting the PUBLIC Back into Public Broadcasting

Chosen as one of the Best Educational Web Resources

CLICK HERE TO SAVE CHANNEL 16

DON'T TOUCH THAT DIAL

As the FCC weighs WQED's bogus arguments for commercializing WQEX, supporters of vibrant public television must speak up, warn

Paul R. Flora and Mike Schneider

(November 25, 2001)

Forum Section, Pittsburgh Post-Gazette

Paul R. Flora was for nine years the regional economist for PNC Bank. He has provided consulting to several public and private organizations in the region, and he consulted pro bono on the PET plan to restore channel 16. Mike Schneider is a writer, living in Edgewood, who since 1996 has worked with community groups to save channel 16.

Don't it always seem to go that you don't know what you've got till it's gone?" In the case of WQEX, channel 16, let's hope we're not singing this tune a year from now. Channel 16 has been a Pittsburgh community resource for 40 years. It will be gone for good if WQED gets its way with the Federal Communications Commission, where QED's lawyers and lobbyists are pressing the case that Pittsburgh doesn't need and can't support two public television stations.

Since 1996, QED has been trying to commercialize channel 16's broadcast license, so it can sell it. Through three rounds of maneuvering, community groups who want to save the channel have stymied it. But on October 11, the FCC opened the case to public comment, shifting it into a new phase that's likely to be decisive. As Pittsburgh-area citizens and TV viewers, this is our chance to let the FCC know what we think, and there's not much time. The deadline for comments is December 18.

As WQED used to remind us during pledge drives, channels 13 and 16 belong to us, the viewers. They are set aside by law "to serve the educational and cultural needs of the community." In today's crowded environment, this reserved airspace is more than ever a prized resource. Many cities, some smaller than Pittsburgh, have more than one public channel, and nearly three-fifths of Americans have access to two or more. If QED gets its way, Pittsburgh - as far as public TV is concerned - will be a one-horse town.

To refresh those who haven't kept up with Pittsburgh's public-TV machinations, the plan to sell channel 16 arose because WQED is in debt. In the late '80s and early '90s, they continued producing programs for national distribution, like National Geographic, long past when it was financially prudent. They paid very high salaries and executive perks to a top-heavy staff - all of which the Post-Gazette has reported.

Since then, new management, led by George Miles, has cut staff and improved the picture - though executive salaries are still high relative to public stations in comparable markets. According to WQED's FCC pleading, however, it is still \$9 million in the hole. Rather than selling Pittsburgh Magazine and other nonbroadcast assets to erase its debt, WQED prefers to cash in an asset it didn't pay for and that rightly belongs to the community.

It should come as no surprise that QED doesn't talk about its past mismanagement when it asks the FCC to let it sell channel 16. But it may surprise some people to know that WQED argues to the FCC that its real problem is Pittsburgh's economy. "Pittsburgh's decline over the last 40 years as a center of industry, commerce and population," says WQED, "is unique in its severity, and has fundamentally (and permanently) altered the ability of the city and its surrounding areas to support both WQED and WQEX."

"Pittsburgh's unusually severe economic decline," says QED - not self-inflicted debt - is what justifies cashing in the channel 16 license. QED's case at the FCC rests on this argument. Two of the four current FCC commissioners have signaled they think it carries some weight. Realists know that politics enters into the picture as much or more than the merits of a case like this, but the FCC has asked specifically for comment on QED's contention that this area can't support two public channels.

Economically, the argument - as you might guess - is flimflam. Many of us remember vividly the economic shock of the early 1980s. Pittsburgh took a hard hit, with drawn-out population decline. But that was 20 years ago, and it preceded WQED's debt. To the extent it was a factor, it could and should have been anticipated.

Over the last decade, contrary to what WQED says, the Pittsburgh regional economy has grown steadily recovering the strength of its pre-recession peak, 1979, and then some. By 1990, Pittsburgh regained its 1979 level of employment, and our area now produces \$10 billion more in real personal income than it did in 1979, with real per-capita income higher than ever before. This is objective economic data, not just the rosy pictures we sometimes get from boosters of the local economy.

It is beyond debate that Pittsburgh's economy is larger and healthier than prior to the steel industry collapse - and has been for some time. So the real question should be not whether Pittsburgh can support two public-TV channels, but does Pittsburgh need two public-TV channels? Yes, more than ever, says Pittsburgh Educational Television. On November 7, this group, established in 1996 by Pittsburgh City Councilman Jim Ferlo, state Rep. Allen Kukovich and union leader Rosemary Trump, announced a plan to save channel 16.

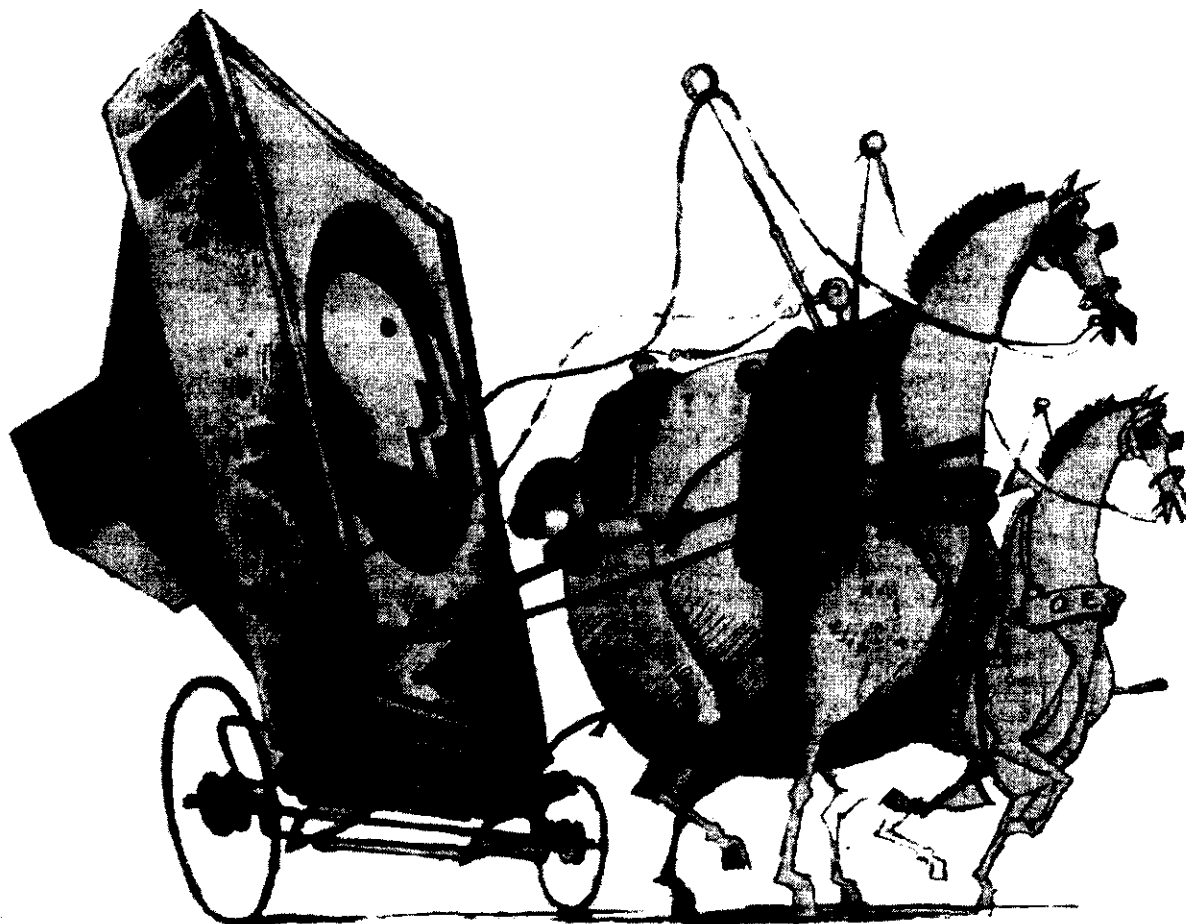
PET wants to revive it along the lines of strong second channels in other cities, Denver and Philadelphia, that produce community-oriented local programs as well as airing many programs not available on commercial stations or on the primary PBS station.

The PET plan reminds us of what we had in Pittsburgh not so long ago. Until WQED shut it down four years ago this month, QEX was a mildly irreverent, hip, entertaining second channel, with commercial-free programming - British comedies, award-winning documentaries, classic movies - not otherwise available in Pittsburgh's TV space. QEX had a loyal following that made it the third-most-watched second channel in the country. It ran on a streamlined budget, about \$1 million annually, at a revenue surplus. That's right - revenue surplus. WQED turned channel 16 into wasted airspace to prove by fiat that Pittsburgh doesn't need it.

In the best of all worlds, QED would use the community airspace of channels 13 and 16 to actively inform us about this case and the impending deadline. You might think that "On Q," the community-affairs program for which QED seems constantly to be patting itself on the back, would be the ideal forum to give this issue some air, with vigorous, open debate. But it won't happen. We invite WQED to prove us wrong.

If you care about public TV, now is your time to be heard. Let the FCC know whether you think Pittsburgh deserves to have two public channels. The PET plan to revive 16, along with information about how to contact the FCC, is available online by **[CLICKING HERE TO SAVE CHANNEL 16](#)**

[CLICK HERE TO READ NEXT ARTICLE](#)



The Citizen-People-Gazette

[HOME](#) | [EVENTS](#) | [GRASS ROOTS](#) | [MEMBERSHIP](#) | [NEWS RELEASE](#) | [RESOURCES](#)

© 2001 All Rights Reserved
Citizens for Independent Public Broadcasting
Manor Oak Two / Suite 441 / 1910 Cochran Road / Pittsburgh, PA 15220
Voice: 412-563-4150 Fax: 412-563-4960 E-mail: cipb@cipbonline.org